



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

UNITED STATES OF AMERICA

VS.

WAYNE DEMPSEY CONNER

§  
§  
§  
§  
§  
§

CASE NO. 1:08-CR-82

**FINDINGS OF FACT AND RECOMMENDATION ON GUILTY PLEA**  
**BEFORE THE UNITED STATES MAGISTRATE JUDGE**

The District Court referred this matter to the undersigned United States Magistrate Judge for administration of a guilty plea and allocution under Rules 11 and 32 of the Federal Rules of Criminal Procedure. Magistrates have the statutory authority to conduct a felony guilty plea proceeding as an “additional duty” pursuant to 28 U.S.C. § 636(b)(3). *United States v. Bolivar-Munoz*, 313 F.3d 253, 255 (5<sup>th</sup> Cir. 2002), *cert. denied*, 123 S. Ct. 1642 (2003).

On June 11, 2008, this cause came before the undersigned United States Magistrate Judge for entry of a guilty plea by the Defendant, Wayne Dempsey Conner, on **Count 1** of the charging **Information**<sup>1</sup> filed in this cause. Count 1 of the Information charges that from on or

---

<sup>1</sup>The Defendant executed a waiver of Indictment which was discussed and filed in the record at the guilty plea hearing.

about October 6, 2005, through on or about July 13, 2007, in Hardin County, Texas, in the Eastern District of Texas, the Defendant, Wayne Dempsey Conner, knowingly and for the purpose of evading the reporting requirements of Section 5313(a) of Title 31, United States Code, and the regulations promulgated thereunder, did structure the deposit of \$534,900 worth of United States currency into a domestic financial institution, Guaranty Bank, by breaking up the currency into sixty-one or more deposits of \$10,000 or less all in violation of Title 31, United States Code, Sections 5324(a)(3) and 5324(d) and Title 31, Code of Federal Regulations, Section 103.11.

Defendant, Wayne Dempsey Conner, entered a plea of guilty to Count 1 of the Information into the record at the hearing.

After conducting the proceeding in the form and manner prescribed by Federal Rule of Criminal Procedure 11 the Court finds:

a. That Defendant, after consultation with counsel of record, has knowingly, freely and voluntarily consented to the administration of the guilty plea in this cause by a United States Magistrate Judge in the Eastern District of Texas subject to a final approval and imposition of sentence by the District Court.

b. That Defendant and the Government have entered into a plea agreement which was disclosed and addressed in open court, entered into the record, and placed under seal.

c. That Defendant is fully competent and capable of entering an informed plea, that Defendant is aware of the nature of the charges and the consequences of the plea, and that the plea of guilty is a knowing, voluntary and freely made plea. Upon addressing the Defendant

personally in open court, the Court determines that Defendant's plea is voluntary and did not result from force, threats or promises. *See* FED. R. CRIM. P. 11(b)(2).

d. That Defendant's knowing, voluntary and freely made plea is supported by an independent factual basis establishing each of the essential elements of the offense and Defendant realizes that his conduct falls within the definition of the crime charged under 31 U.S.C. § 5324(a)(3), structuring of financial transactions.

### **STATEMENT OF REASONS**

As factual support for Defendant's guilty plea, the Government presented the following evidence, which was admitted into the record at the plea hearing. *See Factual Basis and Stipulation.* The Government and Defendant stipulated to the truth of the matters set forth in the factual basis. The Government and Defendant further agreed that Wayne Dempsey Conner, Defendant herein, is one and the same person charged in the Information and the events described in Count 1 of the of the Information occurred in the Eastern District of Texas and elsewhere.

The Government and Defendant further agreed that, had this matter proceeded to trial, the Government would have proven each essential element of the charges contained in Count 1 of the Information beyond a reasonable doubt. Specifically, the Government would have proven, through the testimony of witnesses, and through admissible exhibits, including the testimony of various Department of Treasury Special Agents, the following stipulated facts:

The Government would present records from Guaranty Bank establishing that Defendant Wayne Dempsey Conner of Lumberton, Texas, maintains an account at that financial institution,

account #3803713332. Examination of the bank records for this account for the period January 1, 2005, through July 13, 2007, revealed approximately fifty-three (53) cash deposits just under the \$10,000 reporting requirement. The remaining cash deposits ranged from \$1,000 to \$7,900. These deposits were often broken up into two, three, or more deposits within a short time frame. From January 3, 2005, through July 13, 2007, cash deposits totaling \$534,900 in cash were deposited into account #3803713332. None of these deposits exceeded \$10,000.

A Department of Treasury Special Agent would testify that an analysis of the bank accounts reveal that the funds which were structured constitute legitimate income received by Wayne Dempsey Conner in the course of a fireworks business. However, the agent would further testify that multiple cash deposits of amounts such as \$6,000, \$8,000, \$8,500, \$9,000 or \$9,500 over a short period of time can indicate the breaking up of a larger amount of money into smaller deposits to avoid triggering the filing of a CTR (mandatory for amounts in excess of \$10,000) and is indicative of structuring.

Defendant, Wayne Dempsey Conner, agreed with the facts set forth by the Government and signed the *Factual Basis*. Counsel for Defendant and the Government attested to Defendant's competency and capability to enter an informed plea of guilty. The Defendant agreed with the evidence presented by the Government and personally testified that he was entering his guilty plea knowingly, freely and voluntarily.

#### **RECOMMENDED DISPOSITION**

**IT IS THEREFORE** the recommendation of the undersigned United States Magistrate Judge that the District Court accept the Guilty Plea of Defendant which the undersigned

determines to be supported by an independent factual basis establishing each of the essential elements of the offense charged in **Count 1** of the charging **Information** on file in this criminal proceeding. The Court also recommends that the District Court conditionally accept the plea agreement.<sup>2</sup> Accordingly, it is further recommended that, Defendant, Wayne Dempsey Conner, be finally adjudged as guilty of the charged offense under Title 31, United States Code, Section 5324(a)(3).

Defendant is ordered to report to the United States Probation Department for the preparation of a presentence report. At the plea hearing, the Court admonished the Defendant that the District Court may reject his plea and that the District Court can decline to sentence Defendant in accordance with the plea agreement, the federal sentencing guidelines and/or the presentence report because the sentencing guidelines are advisory in nature. The District Court may defer its decision to accept or reject the plea agreement until there has been an opportunity to consider the presentence report. *See* FED. R. CRIM. P. 11(c)(3). If the Court rejects the plea agreement, the Court will advise Defendant in open court that it is not bound by the plea

---

<sup>2</sup>“(3) Judicial Consideration of a Plea Agreement.

(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.

(B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) Accepting a Plea Agreement. If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) Rejecting a Plea Agreement. If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.” FED. CRIM. P. 11(c)(3)-(5).

agreement and Defendant may have the opportunity to withdraw his guilty plea, dependent upon the type of the plea agreement. *See* FED. R. CRIM. P. 11(c)(3)(B). If the plea agreement is rejected and Defendant still persists in the guilty plea, the disposition of the case may be less favorable to Defendant than that contemplated by the plea agreement. Defendant has the right to allocute before the District Court before imposition of sentence.

### **OBJECTIONS**

Within ten (10) days after receipt of this report, any party may serve and file written objections to the report and recommendation of the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(C). Failure to file written objections to the proposed findings of facts, conclusions of law and recommendations contained within this report within ten (10) days after service shall bar an aggrieved party from *de novo* review by the District Judge of the proposed findings, conclusions and recommendations, and from appellate review of factual findings and legal conclusions accepted by the District Court except on grounds of plain error. *Douglass v. United Serv. Auto. Ass'n.*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*); 28 U.S.C. § 636(b)(1). The constitutional safeguards afforded by Congress and the courts require that, when a party takes advantage of his right to object to a magistrate's findings or recommendation, a district judge must exercise its nondelegable authority by considering the actual evidence and not merely by reviewing and blindly adopting the magistrate's report and recommendation. *See Hernandez v. Estelle*, 711 F.2d 619, 620 (5<sup>th</sup> Cir. 1983); *United States v. Elsoffer*, 644 F.2d 357, 359 (5<sup>th</sup> Cir. 1981) (*per curiam*).

**SIGNED this the 11st day of June, 2008.**

  
KEITH F. GIBLIN  
UNITED STATES MAGISTRATE JUDGE